

NO. 24231

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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1100 ALAKEA CORPORATION, a Hawai'i corporation, Petitioner,

vs.

THE HONORABLE DAN T. KOCHI, JUDGE OF THE CIRCUIT COURT  
OF THE FIRST CIRCUIT, STATE OF HAWAI'I, Respondent,

and

MICHAEL H. NEKOKA; THE CPA CONSULTING GROUP, INC.,  
a Hawai'i corporation dba PKF Hawaii; ERNEST WATARI;  
ROBERT (Bob) AWANA; SWAN, INC., a Hawai'i corporation;  
KEAWE RESORTS, INC., a Hawai'i corporation; KIMO KEAWE;  
WILLIAM TAKABAYASHI dba LYTCO; PATRICIA CONSTANCE ANDERSON  
dba CLASSIC CONSULTANTS, JIM ANDERSON EALTY, INC.,  
a Hawai'i corporation; HARUMICHI OHTANI; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS  
1-10 or OTHER DOE ENTITIES 1-10, Respondents.

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ORIGINAL PROCEEDING  
(CIV. NO. 99-1286-03 (DTK))

ORDER

(By: Moon, C.J., Nakayama, Ramil, and Acoba, JJ., and  
Circuit Judge Marks, in place of Levinson, J., recused)

Upon consideration of Plaintiff-Petitioner 1100 Alakea Corporation's petition for writ of mandamus to the Honorable Dan T. Kochi, Circuit Court Judge of the First Circuit, and the papers in support, it appears that:

1. Petitioner petitions this court to order the respondent judge to vacate the March 29, 2001 order granting (1) Defendants and Third-Party Plaintiffs/Respondents The CPA Consulting Group, dba PKF Hawaii and Ernest Watari's motion to

disqualify Starn O'Toole Marcus & Fisher as Plaintiff's attorney; (2) Defendant and Third-Party/Respondent Michael H. Nekoba's joinder in the motion to disqualify Starn O'Toole Marcus & Fisher; and (3) Defendant/Respondent Swan, Inc.'s joinder in the motion to disqualify Starn O'Toole Marcus & Fisher in 1100 Alakea Corporation v. Nekoba, Civil No. 99-1286-03, presently pending in the circuit court.

2. A petition for a writ of mandamus is an appropriate vehicle for reviewing an order of disqualification. Straub Clinic & Hospital v. Kochi, 81 Hawai'i 410, 414, 917 P.2d 1284, 1288 (1996) (citing Chuck v. St. Paul Fire and Marine Ins. Co., 61 Haw. 552, 606 P.2d 1320 (1980)).

3. The grant or denial of a disqualification motion is within the sound discretion of the trial court. Straub, 81 Hawai'i at 415, 917 P.2d at 1289.

4. In reviewing an order of disqualification, a petitioner's application for a writ of mandamus will not be granted unless the petitioner demonstrates that the basis upon which the trial court has rested its order of disqualification is clearly insufficient and a convincing showing is made that irreparable and immediate harm would otherwise be the necessary consequence. Chuck, 61 Haw. at 558, 606 P.2d at 1324.

5. In the instant case, the record supports the trial court's ruling and Petitioner fails to show that the basis upon which the trial court rested its order of disqualification is

clearly insufficient and fails to show any irreparable harm will result from the order of disqualification.

6. Petitioner fails to demonstrate that the trial court flagrantly and manifestly abused its discretion by granting the motion to disqualify Starn O'Toole Marcus & Fisher. See Straub Clinic, 81 Hawai'i at 414, 917 P.2d at 1288 (where a trial court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion or has refused to act on a matter properly before the court). Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus directed to the Honorable Dan T. Kochi, Circuit Court Judge of the First Circuit, is denied.

DATED: Honolulu, Hawai'i, October 15, 2001.